

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

Decision mailed: 3/11/11
Civil Service Commission *CS*

WILLIAM ROSA, JR.,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

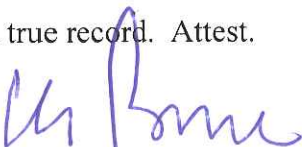
Case No.: G1-10-76

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on March 10, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated January 20, 2011. Neither party submitted written objections. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell and Stein, Commissioners [Marquis – Absent]) on March 10, 2011.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

William Rosa, Jr. (Appellant)
Jeffrey Bolger (for Appointing Authority)
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
FAX: 617-727-7248

January 20, 2010

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: William Rosa, Jr. v. Department of Correction
DALA Docket No. CS-10-642

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201 JAN 24 A 10:00
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

Richard C. Heidlage, Esq.
Chief Administrative Magistrate

Enclosure

cc: William Rosa, Jr.
Jeffrey Bolger

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

William Rosa, Jr.,
Appellant

v.

Docket Nos. G1-10-76, CS-10-642

Department of Correction,
Appointing Authority

Appearance for Petitioner:

Pro Se
98 Hobson Avenue
Tiverton, R.I. 02878

Appearance for Appointing Authority:

Jeffrey S. Bolger
Department of Correction
P.O. Box 946
Industries Drive
Norfolk, MA 02056

Administrative Magistrate:

Judithann Burke

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2011 JAN 24 A 10:00
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

CASE SUMMARY

The Appointing Authority, Department of Correction, had reasonable justification to bypass the Appellant for appointment to the position of Correction Officer I, by virtue of an unsatisfactory criminal history check that revealed two arrests for Assault and Battery.

RECOMMENDED DECISION

The Petitioner, William Rosa, Jr. is seeking review of the decision of the Department of Correction (DOC) not selecting him for appointment to the position of

Correction Officer I when he was bypassed on March 5, 2010. (Exhibit 2). He appealed in a timely fashion pursuant to the provisions M.G.L.c. 31 s. 2(b). (Exhibit 1) A hearing was held on August 27, 2010 at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA.

At the hearing, eleven (11) exhibits were marked. The Appellant testified and argued in his own behalf. The Appointing Authority presented the testimony of Alexandra McInnis, Director of Personnel in DOC. One (1) audiocassette was made of the proceedings.

FINDINGS OF FACT

1. The Appellant, William Rosa, Jr., 23 y.o.a., applied for a position as a Correction Officer I with the Appointing Authority, Department of Correction, in July 2009. He signed the certification, no. 4090016, on July 20, 2009. His Civil Service test score was "91." (Exhibits 3 and 4).

2. The DOC performed a background check on the Appellant and other applicants during August 2009. (Exhibits 3-5)

3. During the criminal history check, it was discovered that the Appellant had been arrested and charged by the Tiverton, R.I. Police Department on two separate occasions. The first arrest, on August 4, 2005, was for Domestic-Simple Assault and Battery. The matter was dismissed on September 29, 2005. The second arrest, on March 22, 2009, was for Simple Assault or Battery and Disorderly Conduct. These charges were disposed of prior to trial. The alleged victim chose not to press charges. (Exhibits 6, 8 and 9)

4. The Appellant, who served in the United States Army from November 17, 2005 through March 22, 2009 and did a tour of duty in Iraq, received non-judicial punishment (Article 15) through the Army for Wrongful Use, Possession and Introduction of Dangerous Drugs, all for possession and use of steroids. (Exhibit 8)

5. The DOC has a policy that any prospective applicant with a recent Assault and Battery charge will be bypassed. The DOC is concerned about the use of excessive force among its Correction Officers.

6. The Appellant's father, William Rosa, Sr., is a Correction Officer in the DOC. (Testimony)

7. The Appellant has no law enforcement experience. (*Id.*)

8. On March 5, 2010, the DOC informed the Appellant that he failed to meet the eligibility criteria for the position of Correction Officer I by virtue of an "unsatisfactory criminal history check." (Exhibit 2)

9. The Petitioner filed a timely appeal. (Exhibit 1)

CONCLUSION AND RECOMMENDED DECISION

The issue for determination in this appeal is "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken". *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). "Reasonable justification" is defined as "adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law". *Selectmen of Wakefield v. Judge of First District Court of East Middlesex*, 262 Mass. 477, 482 (1928) and *Commissioners of Civil Service v. Municipal*

Court of Boston, 359 Mass. 214 (1971). Pursuant to G. L. c. 31 § 2(b), the Appointing Authority must prove by a preponderance of the evidence that the reasons assigned for the bypass were “more probably than not sound and sufficient”. *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991).

After a careful review of all of the testimonial and documentary evidence in this case, I have concluded that the Appointing Authority has met its burden of proving that its reasons for the bypass of the Appellant were “more probably than not sound and sufficient”. While the Appellant has no record of criminal convictions, he has an arrest record that includes two arrests for Assault and Battery. The first arrest occurred a mere three months prior to his entry into the U.S. Armed Forces and the second arrest occurred within two days of his discharge from the Army. These arrests call into question the Appellant’s self control, maturity level, and judgment. Further, during his Army career, he was disciplined for a drug infraction, ultimately a violation of the rules of the Army.

The picture that emerges is one of a person who has issues with self control in pressure situations and who chooses to ignore certain rules of law when it may be convenient for him. The Appellant’s history certainly reflects episodes of poor self control which resulted in police involvement, occasional violence and frequent poor judgment, all of which are unacceptable behaviors in a public safety employee who is required to respond to volatile situations.

In conclusion, the Civil Service Commission cannot substitute its judgment for

that of the Appointing Authority. *Cambridge v. Civil Service Commission, supra*, p. 304.

I recommend that the Civil Service Commission deny the appeal, affirm the action of the DOC, and uphold the bypass.

Division of Administrative Law Appeals,
BY:

A handwritten signature in cursive script, reading "Judithann Burke".

Judithann Burke
Administrative Magistrate

DATED: January 20, 2010